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A report from the inaugural IBA Corporate Governance Conference in Singapore

Effective boards are at the heart of corporate governance

"I was very impressed by the fact that the organising committee assembled such a range of leading practitioners from around the world and share insights into these issues."
Justice Martin Daubney of the Supreme Court of Queensland

As corporations pursue business opportunities globally in search of higher returns for shareholders, investors, too, increasingly desire more involvement in the process. The result is a demand on boards, for more effective corporate governance to achieve better mutual trust and minimize risk.

Such was the macroeconomic backdrop for the [International Bar Association's](#) (IBA) inaugural corporate governance conference in Singapore.

Corporate Governance – Recent Trends and Developments, jointly organized by the IBA's Corporate and M&A Law Committee and Capital Markets forum, the event also earned support from the IBA Asia Pacific Regional Forum, the Japan Federation of Bar Associations, the Korean Bar Association, The Law Society of Hong Kong, The Law Society of Singapore, and the Singapore Corporate Counsel Association. Held on 16-17 of January 2014, at the Raffles Hotel Singapore, over 120 delegates and speakers from [twenty-eight countries](#) attended.

Conference co-chairs were Rachel Eng (Co-Chair, IBA Capital Markets Forum), of Wong Partnership, Singapore and Sergio Sánchez Solé (Chair, IBA Corporate Governance Sub-Committee) of J&A Garrigues, Barcelona.

Keynote speaker Simon Israel, Chairman of Singapore Telecommunications Ltd., addressed how creating an effective board at the heart of corporate governance was a key component, explaining in lucid and clear language that strategy was central on a company's agenda. Key issues, he believed, including creating the right strategy, were, leadership; culture and values, and risk management.

Company strategy, he said, informed all other elements and essentially, all other elements needed alignment with that, including renewal and recruitment of board members based on their knowledge of the sector. This, he insisted, required flexibility to favour business's needs.

Current directors should participate in the process with intellectual honesty and advised: "It is important that discussions be robust remembering that while consensus is ideal, it is not always achievable. Equally importantly, the board should always evaluate substance over form. There needs to be clear delineation between the board and management, with the Chairman supporting the board and management through critical feedback: Always open and transparent."

Mr. Israel referred to qualities of clarity, respect, alignment, and transparency with practical examples, and concluded his presentation by saying that communication and leadership needs to be aligned to a clear strategy that is robust, transparent, aligned and well-communicated.

The first session on the first day was [Corporate Governance – Recent Trends in the US, Europe and Asia: Are Regulations Imposing More Duties on Board of Directors?](#) and was co-chaired by Derk Lemstra (Secretary-Treasurer, IBA Capital Markets Forum), of Stibbe, Amsterdam and Sergio Sánchez Solé.

The session proved useful for practitioners in jurisdictions where less-developed corporate governance prevailed, since they learned of practices in more mature markets, describing crucial issues such as independent directors, proxy advisors and diversity at the board level.

[Mr. Sánchez](#) commented: "Clearly there are several approaches around the world to promote gender diversity at board level but that, in fact, true diversity is only achievable when companies are convinced it is good for business: which it actually is! On the other hand, the discussions among panellists showed that the increasing role of shareholders in determining the compensation for directors is a fact, too, in most of the jurisdictions."

Given the increased focus by Asian listed companies on corporate governance 'best practices', panel presentations provided a useful window into corporate governance standards in several major jurisdictions, including the US, EU and India, among others. [Dennis Barsky](#) of Jones Day, Singapore, said: "Even as

governance standards vary across jurisdictions, we are seeing a convergence of best practices, driven in part by the globalization of the proxy solicitation industry."

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He went on to explain that board composition and director independence issues are clearly at the forefront of recent legislative and regulatory developments and emphasized: "Critical to these issues is not just compliance with black letter standards related to conflicts of interest and competency, but an appreciation that board members must be rigorous in their analysis and ask the difficult questions that may not win friends among management."

Speaking on global trends for executive compensation, [Takashi Toichi](#) (Secretary, IBA Current Legal Developments Sub-Committee) of Anderson Mori & Tomotsune, Tokyo, explained: "Although it is now common in US and European countries, for the board of directors to determine, compensation awards still require the (non) binding votes of shareholders, or so called 'Say-on Pay'.

"On the other hand, some Asian countries use different approaches to determine executive compensation in western countries. Performance-based compensation is increasingly used by many companies in various jurisdictions, and equity compensation which is the most commonly used form of long term performance compensation, is generally allowed, too, but usually requires approval of the shareholders' meeting."

The second session was [Executive Compensation – What Should be the Role of Shareholders?](#) and it assessed the position across the US, Europe and Asia.

Co-chaired by Rachel Eng and Christian Herbst (Senior Vice-Chair, IBA Corporate and M&A Law Committee) of Schoenherr, Vienna, the discussion centred on the global backdrop previously mentioned and unusual scenarios of compensation for senior management. For example, in the context of M&A or golden handshakes, and based on the points shared by the panel, most countries did not appear to have any shareholder-centric governance over unusual or one-off payments to senior management.

[Ms. Eng](#) concluded: "While executive compensation was historically within the primary purview of the board, there is an emerging trend where the board's powers are restricted, from the US system of 'say on pay' to the EU's 2014 bonus cap for material risk takers. Asian countries, on the other hand, do not seem to have suffered a major backlash; thus do not appear to be experiencing similar social or political pressure as the west to control executive compensation formulae or schemes."

The next session was [The Role of Investors in Corporate Governance – How will Investors Add Value at the Board Level?](#) and was co-chaired by [Ellisa Opstbaum Habbart](#) (Secretary, IBA Corporate Governance Sub-Committee), of The Delaware Counsel Group, attorneys at law, Wilmington, and [Petra Zijp](#), of Nauta Dutilh, Amsterdam. It addressed directors facing the challenge of creating value for shareholders.

Different shareholders, the panel agreed, would have different expectations as to what constitutes value. Panel co-chair [Ellisa Opstbaum Habbart](#) reinforced these points saying: "To align the actions of the board with shareholders' expectations, it's crucial that a board establish the goals of the company and disclose them to shareholders in a clear and complete manner."

[Ms. Habbart](#) concluded: "If this is done, potential shareholders understand what they are buying into before they make the investment. If the corporation already has shareholders, the more details provided as to how the board established the goals, the better in order to reduce conflicts between the board and the shareholders."

One of the panellists, [Annabelle Yip](#), of Wong Partnership, Singapore, commented after the session: "We had an informative and lively discussion around how the different profiles of shareholders in the US, Europe and Asia affects the role that investors play in influencing the governance of corporations and shareholder activism."

The next session [Management of Risks – Whose Responsibility Is It?](#) co-chaired by [Katherine Ashton](#) (Senior Vice-Chair, IBA Capital Markets Forum) of Debevoise & Plimpton, London and [Guy Harles](#) (Treasurer, IBA Corporate and M&A Law Committee) of Arendt & Medernach, Luxembourg, held a lively discussion of the new Singapore risk guidelines for listed companies, as well as a cross-border comparison as to board responsibilities in the United States, Europe and Japan.

[Katherine Ashton](#) summed up the debate: "Risk management is an increasingly important topic in corporate governance. Of course, boards of directors cannot anticipate or manage every risk, but they are expected to set in place structures for identifying and considering potential risks to a company."

The second day began with the session [Effectiveness of Board – Composition, Skills, Diversity and Proportion of Independent Directors: Do These Matter?](#) Co-chaired by [Jocelyn Kelley](#) (Senior Vice-Chair, IBA Corporate and M&A Law Committee) of Blake Cassels & Graydon, Vancouver and [Tatsu Katayama](#) (Membership Officer, IBA Capital Markets Forum) of Anderson Mori & Tomotsune, Tokyo, the session looked at starting points for an effective board, the composition of the board, the evolving landscape of director independence and diversity among directors. The panel of M&A practitioners and corporate governance experts provided valuable insight into the regulatory environment and governance trends in the UK, USA, the Netherlands, India and Korea.



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One of the panellists, [Cyril Shroff](#), of Amarchand & Mangaldas & Suresh A Shroff & Co, Mumbai said: "Indian companies are usually promoter-held with an identified single largest shareholder who can usually influence director appointments. Therefore, much decision-making tends to be 'off-the-board' as the controlling shareholder usually steers or influences decision-making."

[Jocelyn Kelley](#) added, "While diversity of viewpoint and experience are highly desired attributes, ultimately an effective board must be comprised of directors who contribute to the right board dynamic."

Commenting after the session, panellist [Hojoon Moon](#), of Lee & Ko, Seoul said, "Sharing the insights of experienced attorneys from around the globe on board composition was invaluable."

The conference closed with a final session on [M&A/Takeover Defence – Role of Directors](#), chaired by Pere Kirchner (Co-Chair, IBA Capital Markets Forum) of Cuatrecasas Gonçalves Pereira, Barcelona. The panel consisted of a broad spectrum of experienced practitioners from Asia and around the world and discussed how directors' response to takeovers were vastly different in Asia compared to other parts of the world. Boards have a much more important role, protecting minority interests. Elsewhere, panellists agreed, companies needed to ensure they did not keep appropriate takeover proposals from shareholders.

Panellist [David Friedlander](#) of King & Wood Mallesons, Sydney added: "The law, regulators, shareholders and the media put pressure on directors on how to respond to takeovers, however, boards have a degree of practical immunity in talking up target company prospects because no bidder will ever say that they have paid too much."

[Mr. Kirchner](#) wrapped up the session by saying: "We could conclude that in several critical matters, such as potential defense measures or the role of regulators, there are very different approaches from jurisdiction to jurisdiction."

In the conference's closing remarks, Sergio Sánchez Solé thanked all speakers for their insightful comments, and equally delegates for their participation.

"The conference was insightful," said [Yap Lune Teng](#) of Allen & Gledhill LLP, Singapore. "It provided a global perspective of the developments in corporate governance and exposed delegates to the experiences of legal professionals and directors in various jurisdictions."

Attendee [Justice Martin Daubney](#) of the Supreme Court of Queensland, Vice-Chair of the IBA's Judges' Forum, was equally elated. He said: "The sessions covered a broad range of contemporary governance issues, and did so from a particularly practical perspective. I was very impressed by the fact that the organising committee assembled such a range of leading practitioners from around the world to share their insights into these issues."

By Michele O'Sullivan and Jeffrey Forbes, TalklawMedia © 2014

Delegates from the following countries attended

Australia, Austria, Bermuda, Canada, Chile, China, Denmark, England, France, Germany, India, Indonesia, Japan, Kenya, Luxembourg, Mongolia, Netherlands, Nigeria, Pakistan, Poland, South Korea, Spain, Switzerland, Taiwan, USA, Vietnam and Singapore.

Sessions and Speakers

Session 1

Corporate Governance – Recent Trends in the US, Europe and Asia: Are Regulations Imposing More Duties on Board of Directors?

Co-chairs

Derk Lemstra (Secretary-Treasurer, IBA Capital Markets Forum), Stibbe, Amsterdam and Sergio Sánchez Solé (Chair, IBA Corporate Governance Sub-Committee), J&A Garrigues, Barcelona

Panel

Dennis Barsky, Jones Day, Singapore

Roberto Guerrero, Guerrero Olivos Novoa Errázuriz Abogados, Santiago de Chile

Zia Mody, AZB Partners, Mumbai

Takashi Toichi (Secretary, IBA Current Legal Developments Sub-Committee), Anderson Mori & Tomotsune, Tokyo



C'M'S' Hasche Sigle
Rechtsanwälte Steuerberater



Session 1 panel from left to right: Derk Lemstra, Sergio Sánchez Solé, Dennis Barsky, Takashi Toichi, Roberto Guerrero, and Zia Moody.



Session 2

Executive Compensation –What Should be the Role of Shareholders?

Co-chairs

Rachel Eng (Co-Chair, IBA Capital Markets Forum), Wong Partnership, Singapore and Christian Herbst (Senior Vice-Chair, IBA Corporate and M&A Law Committee), Schoenherr, Vienna

Panel

Thomas Britt, Debevoise & Plimpton, Hong Kong
Lee Ming Chua, General Counsel, GIC Pte Ltd, Singapore
Graham Gibb, MacFarlanes, London
Wolfgang Grobecker, P+P Pollath & Partners, Munich
Christopher Kurth, General Counsel, UBS, Singapore
Yingling Wei, Junhe Law Firm, Beijing

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Session 2 left to right: Jon Grouf (at the podium) and on the panel are Rachel Eng, Christian Herbst, Thomas Britt, Lee Ming Chua, Graham Gibb, Wolfgang Grobecker, Christoph Kurth, and Yingling Wei

Session 3

The Role of Investors in Corporate Governance – How will Investors Add Value at the Board Level?

Co-chairs

Ellisa Opstbaum Habbart (Secretary, IBA Corporate Governance Sub-Committee), The Delaware Counsel Group, attorneys at law, Wilmington, and Petra Zijp, Nauta Dutilh NV, Amsterdam

Panel

Bertrand Cardi, Darrois Villey Maillot Brochier, Paris
Nicholas Nash, Director & Principal, General Atlantic Singapore Fund Pte Ltd, Singapore
Ben Roth, Wachtell Lipton Rosen & Katz, New York
Bob Wooder, Blake Cassels & Graydon, Vancouver
Annabelle Yip, WongPartnership, Singapore

Session 4

Management of Risks –Whose Responsibility Is it?

Co-chairs

Katherine Ashton (Senior Vice-Chair, IBA Capital Markets Forum), Debevoise & Plimpton, London, and Guy Harles (Treasurer, IBA Corporate and M&A Law Committee), Arendt & Medemach, Luxembourg

Panel

Hisashi Hara, Nagasima Ohno & Tsunematsu, Tokyo
Andrew Lim, Allen & Gledhill, Singapore
Irving Low, KPMG Advisory, Singapore

Session 5

Effectiveness of Board – Composition, Skills, Diversity, Proportion of Independent Directors: Do These Matter?

Co-chairs

Jocelyn Kelley (Senior Vice-Chair, IBA Corporate and M&A Law Committee), Blake Cassels & Graydon, Vancouver, and Tatsu Katayama (Membership Officer, IBA Capital Markets Forum), Anderson Mori &

PAUL
HASTINGS

BELL GULLY



SQUIRE
SANDERS

WILLIAM FRY

Tomotsune, Tokyo

Panel

Peter Brien, Slaughter & May, Hong Kong
William Chua, Sullivan & Cromwell, Hong Kong
Gaike Dalenoord, Nauta Dutilh NV, Amsterdam
Hojoon Moon, Lee & Ko, Seoul
Cyril Shroff, Amarchand & Mangaldas & Suresh A Shroff & Co, Mumbai

Session 6

M&A/Takeover Defence – Role of Directors

Chair

Pere Kirchner (Co-Chair, IBA Capital Markets Forum) of Cuatrecasas, Gonçalves Pereira, Barcelona

Panel

David Friedlander, King & Wood Mallesons, Sydney
Kah Loon Mah, Deputy Head, Corporate Finance, ASEAN-CIMB, Singapore
Prabhat K Mehta, Sidley Austin, Singapore
Yun Zhou, Zhong Lun Law Firm, Shanghai

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